

TERMS OF TRADE

September 2024

1. DEFINITIONS

In these Terms and Conditions, unless the context requires otherwise:

Agreement means the contract formed upon JSC's acceptance of an Order placed by the Customer, as further described in clause 3.2.

Cladding System Warranty means (if applicable) the warranty provided by JSC for JSC's cladding system components.

Claims means actions, damages, claims (including negligence), losses, demands, liabilities (including vicarious liability), injuries, suits, actions, judgments, costs and expenses of any kind whatsoever (including, without limitation, legal fees on a solicitor-client basis, service costs and costs of recovering unpaid amounts).

Consent means any consents, approvals, licences, permits and authorisations required by a regulatory agency or otherwise.

Customer means the client engaging JSC to provide the Products and may include any person(s) acting as an agent and/or behalf of a company and/or trust and/or partnership.

Goods means any and all goods to be provided by JSC, as agreed between the Parties.

Guarantor means the person(s) named as guarantor in the Credit Account Application.

Intellectual Property means any patents, copyright, trademarks, designs, and any other right granted by the operation of law which confers protection on any written or artistic work created by intellectual effort and all associated intangible assets created as a by-product (including brands, trade names, services, techniques, configurations, know-how, methods, concepts and ideas), whether registered or not.

JSC means J Scott and Company Limited trading as JSC, and any Personnel acting on behalf of and with the authority of J Scott and Company Limited.

Laws means all statutes, regulations, planning requirements, by-laws, codes (including the Building Code) and all other relevant laws.

Order means any request for Products accepted by JSC.

Parties means the Parties to the Agreement and "Party" means any one of the Parties.

Person means and includes any natural person, company, corporation, firm, partnership, joint venture, society, organisation or other group or association of persons (whether incorporated or not), trust, state or agency of state, statutory or regulatory body, local authority, government or governmental or semi-governmental body or agency (in each case whether or not having separate legal personality).

Personal Information means information about an identifiable Person including but not limited to a Person's name, address, date of birth, occupation, driver's license details, email address, previous credit applications, and credit history.

Personnel means JSC's employees, contractors, directors and officers, advisers and authorised representatives.

Price means the amount payable by the Customer for the Products agreed between the Parties, or if not agreed, then JSC's prevailing rates and charges for those Products.

Products means all Goods and Services supplied by JSC to or on behalf of the Customer, including the importing, processing and supply of timber and associated products by JSC to the Customer.

Quotation means an estimate of the price of the Products provided by JSC.

Services means the services to be provided by JSC and/or Personnel as agreed between the Parties (which may include advice, consultancy and other services).

Sign-off means any certification, verification, testing or other approval (whether required by a regulatory agency or otherwise) relating to or including the Products or any part of the Products.

Terms means these terms and conditions.

Third Party Products means all goods manufactured by any Person other than JSC, and all services supplied by any Person other than JSC (e.g. coating suppliers and/or installers).

Timber Grading Standards has the meaning described in clause 17.6(b).

Working Days means days other than Saturday, Sunday, public holidays in New Zealand, or days from 23 December – 6 January (inclusive).

2. GENERAL RULES OF INTERPRETATION

- 2.1. Singular words include the plural and vice versa, and where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- 2.2. References to any Party shall mean and include a reference to that Party, its successors, executors or personal representatives (as the case may be), and transferees.
- 2.3. Where more Parties than one are covenanting Parties, the covenants expressed or implied on these Terms bind the covenanting Parties jointly and each of them severally.
- 2.4. Any reference to legislation, statute, regulation, ruling, code, rules or ordinance includes reference to any modification, substitute for, consolidation or re-enactment of it and any regulation, order in council or other instrument from time to time made or issued under such legislation, statute, regulation, ruling, code, rules or ordinance.
- 2.5. Headings are for convenience only and do not affect the interpretation of these Terms except for use as cross-references.
- 2.6. Any covenant not to do anything shall also constitute an obligation not to suffer, permit, cause or assist any other person to do that thing.
- 2.7. All references to Prices, fees and payments in the Agreement are in New Zealand dollars unless otherwise stated and shall be exclusive of Goods and Services Tax ("GST") and any other taxes, levies duties or impositions of a similar nature imposed by any authority, and (unless expressly included in an Order) freight charges, insurance charges and storage costs.
- 2.8. A document or agreement between the Parties (including the Agreement) includes such document or agreement as modified varied, supplemented, novated, replaced or substituted from time to time.
- 2.9. Where the Customer consists of more than one Person, the covenants expressed in the Agreement shall bind the Persons jointly and each of them severally.

3. ENGAGEMENT

- 3.1. The Customer engages JSC to supply the Products, and JSC accepts that engagement, on these Terms.
- 3.2. An Order, together with these Terms constitutes the entire Agreement between the Parties and supersedes all prior representations, agreements, statements and understandings, whether verbal or in writing, in relation to the Products or other subject matter of these Terms.
- 3.3. Any documents supplied by the Customer which contain any terms and conditions shall have no effect to the extent that they are inconsistent with these Terms or are not expressly agreed in writing by JSC.

4. RELIANCE ON CUSTOMER INFORMATION

- 4.1. The Customer acknowledges that JSC may, in the course of providing the Products, make assessments based on information supplied either by the Customer or compiled by others. JSC is entitled to rely on such information without the need to verify its accuracy and completeness. The Customer agrees that JSC will not be liable for any loss or damage the Customer sustains, directly or indirectly, in connection with JSC's reliance on that information.

5. ORDERS

- 5.1. A contract shall not come into existence between the Customer and JSC until JSC's acceptance of an Order.
- 5.2. Any Order accepted by JSC will be on these Terms only.

6. COMPATABILITY

- 6.1. There are other sources of products that may appear similar or compatible with the Products supplied by JSC. If any products are obtained from alternative sources, they may not be suitable or compatible for use with JSC Products.

7. PERFORMANCE

- 7.1. Unless specified and agreed in the Order, JSC may utilise its standard practices, methods, tolerances and assumptions in providing the Products. Accordingly, any specific requirements for the Products must be expressly stated in the Order.
- 7.2. Any periods of time or any schedules or project plans estimated for completion of the Products (or any part of the Products) are estimates only. JSC shall use reasonable commercial endeavours to meet deadlines; however, any delay shall not entitle the Customer to terminate the Agreement or claim any remedies.
- 7.3. JSC shall, where practicable, advise the Customer of any matter, circumstance or instruction that may affect the timely delivery or quality of the Products and/or constitute a variation to the Products and thereby require an adjustment to the Price; however, failure to do so will not prejudice or affect JSC's rights under the Agreement.
- 7.4. Unless expressly agreed in writing, JSC will have no responsibility for the Products after delivery or completion. Any post-delivery or post-completion obligations of JSC (e.g. maintenance support for the Products) must be agreed in writing.

8. DELIVERY AND RISK

- 8.1. If JSC delivers Goods, the Customer shall pay the additional costs of delivery unless otherwise agreed in writing by JSC.
- 8.2. Unless otherwise agreed, delivery of Goods shall be deemed complete:
 - (a) At the time when the Goods are made available by JSC for collection; or
 - (b) If alternative delivery arrangements are agreed, when JSC gives possession of the Goods to a carrier for delivery.
- 8.3. In the event that the Customer is unable to take delivery/collection of the Goods, then JSC shall be entitled to charge a reasonable fee for redelivery and/or for holding the Goods and any related materials pending redelivery or collection.
- 8.4. Unless otherwise agreed in writing, delivery time shall not be of the essence. JSC will in no event be liable for any late delivery of Products. The Customer shall be bound to accept and pay for Goods delivered within a reasonable time after the cause of any delay.
- 8.5. JSC reserves the right to deliver Goods by instalments and to separately invoice each instalment.
- 8.6. The risk in Goods shall pass to the Customer when the Goods are delivered or when JSC first makes an attempt to deliver if the Customer fails to accept the Goods, provided however that full legal title and ownership of the Goods is retained by JSC until full payment is made for the Goods together with all amounts due from the Customer to JSC.
- 8.7. Should the Goods remain on JSC's premises or with a carrier due to failure of the Customer to collect or receive the Goods, or at the request of the Customer, all risks in the Goods shall be borne by the Customer from that time.
- 8.8. The Customer must insure the Goods on or before delivery. The Customer will be fully responsible for any loss of or damage to the Goods following delivery however caused.
- 8.9. Subject to clause 17.1, the Customer must fully inspect all Goods upon delivery and give written notice to JSC of:
 - (a) Any claim for missing Goods, or Goods damaged in transit, within 7 days; and
 - (b) Any problem with the Goods, or non-compliance with the Order requirements or these Terms, within 7 days

together with full details (including photographic evidence) of the same. The absence of such notice will constitute a waiver by the Customer of any claim it may have against JSC in relation to the Goods and any relevant Order(s).

9. CUSTOMER'S GENERAL OBLIGATIONS

9.1. The Customer agrees to:

- (a) Provide JSC with a full brief of relevant requirements and objectives, together with full information about the purpose, implementation and any other information necessary to enable JSC to comply with its obligations under the Agreement, and to provide any other information reasonably requested by JSC;
- (b) Provide on request a suitably qualified or informed representative, agent or employee, who shall be available to JSC to advise on access and any other matter within the Customer's knowledge or control which may assist JSC in complying with its obligations under the Agreement;
- (c) Work constructively and in good faith with JSC in order to resolve any aspects of the Products, to enable the Products to be provided efficiently; and
- (d) If JSC supplies Goods prior to full payment, store Goods supplied by JSC in a way that enables them to be identified as having been supplied by JSC.

10. PRODUCT SPECIFICATIONS

- 10.1. The Customer acknowledges that all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in JSC's fact sheets, price lists, advertising material, manuals, installation guidelines, standards or other material, are approximate only and are given by way of indication only. The Customer shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the Agreement, unless expressly stated as such in writing by JSC.
- 10.2. Notwithstanding that JSC may have supplied plans, specifications, illustrations, drawings, data, dimensions, ratings, weights, guidelines, instructions, policies, procedures and directions in respect of the Goods, the Customer recognises that JSC has no control over how the Products are used by the Customer, and the Customer acknowledges and affirms that:
 - (a) It is solely responsible for making decisions about the use, suitability or attributes of the Products, including ensuring that the Products are fit for purpose and satisfy the Customer's requirements. The Customer may provide plans, designs, specifications, drawings or Consents, and may use the Products as the Customer chooses (including combining the Products with existing or Third Party Products).
 - (b) It has made its own independent investigation, analysis and evaluation of the Products, and affirms, that in making the decision to purchase and use the Products, it has relied solely upon its independent evaluation and those of its representatives, including professional, technical and other advisers;
 - (c) It has had the opportunity to examine the Products, seek independent advice in relation to them, to conduct a full evaluation in relation to the Products and to obtain information in respect of those matters that it considers relevant, and that it has knowledge and experience in building, cladding, construction and other related matters and is therefore capable of evaluating the merits and potential uses of the Products; and
 - (d) JSC shall not be liable in respect of any liabilities, costs, claims, loss, damages or demands (including negligence) which may be suffered by the Customer whatsoever, whether suffered itself or as a result of claims against it by a third party or otherwise, arising from or related to the use of the Products.

11. CONSENTS AND SIGN-OFFS

- 11.1. JSC is not responsible for the acquisition, or liable for the accuracy, validity or compliance, of any Consent or Sign-off.
- 11.2. The Customer shall be responsible for obtaining, maintaining and administering all Consents and Sign-offs required for the Goods (if any) and paying all applicable Consent and Sign-off fees and costs.
- 11.3. Subject to clause 11.2, and assuming the Customer is not in default of its obligations, JSC may upon request provide the Customer with information and documentation as may be reasonably required to enable the Customer to apply for the necessary Consents.

- 11.4. The Customer must not rely on, or disclose to any other party, any document provided by JSC for the purpose of obtaining or supporting a Consent or Sign-off without JSC's prior written approval that the document may be used for that purpose.
- 11.5. If JSC provides any inspection reports, observation notes, installation advice, or other documents or information, such documents and information are not to be treated as quality assurance or compliance advice, and must not be forwarded or supplied to any other Person, unless expressly stated to be for that purpose.
- 11.6. If the Customer provides unsolicited information, plans, building consent records, or other documents or information, JSC shall not be liable in any way whatsoever for such unsolicited information and documents and will not review them.

12. PRICE AND PRICE VARIATION

- 12.1. JSC may provide a written Quotation, which (subject to clause 12.5) will be valid for 30 days, unless specified differently in the Quotation.
- 12.2. The Customer can accept the Quotation by acceptance in writing or by requesting that JSC proceeds to supply the Products.
- 12.3. JSC may withdraw the Quotation at any time before the Customer has accepted the Quotation.
- 12.4. Where an estimate of the Price is given for the Products, JSC shall not be bound by that estimate.
- 12.5. The Price is subject to reasonable upward adjustment in the event that:
 - (a) Through no fault of JSC, the Products require more effort and labour to complete than reasonably contemplated;
 - (b) The cost of materials, transport, labour, customs and other duties, insurance, exchange rates and any other factors affecting the cost of the Products unexpectedly increases due to circumstances beyond the control of JSC between the date of the Order and the date the Products are completed;
 - (c) The Parties agree to vary the scope of the Products or delivery schedule;
 - (d) After completion and approval of any Products or part of any Products, the Customer instructs JSC to alter the Products supplied; and/or
 - (e) Any alteration to the Products is required as a condition of obtaining any Consent or Sign-off either before or after work on the Products commences.

13. PAYMENT TERMS

- 13.1. Unless otherwise agreed, the Customer shall pay JSC the Price in full and without set off or deduction on or before the 20th day following the date of invoice.
- 13.2. The Customer acknowledges that any supply of Goods on credit shall not take place until the Customer has completed a Credit Account Application form with JSC and it has been approved with a credit limit established for the Customer's account. JSC shall reserve the right to require a personal guarantee and/or credit references from the Customer and undertake credit checks for the Customer as part of the credit application process.
- 13.3. In the event that an Order exceeds the Customer's credit limit or any payment to JSC is overdue, JSC reserves the right to refuse that Order or delivery of the Products or request an alternative payment method.
- 13.4. At JSC's sole discretion a non-refundable deposit (in part payment of the Price) may be required from the Customer.
- 13.5. The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by JSC or withhold payment of any invoice because part of that invoice is in dispute.
- 13.6. The Customer may not reduce or withhold payment to JSC because a third party involved has not carried out their obligations to the Customer.
- 13.7. Any monies paid by the Customer may be allocated by JSC toward any amount owed by the Customer.
- 13.8. Nothing in these Terms shall prejudice or limit JSC's ability to make a payment claim under the Construction Contracts Act 2002.
- 13.9. Payment of JSC's invoice may be made by cash, electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed between the Customer and JSC.
- 13.10. The Customer must pay GST and any other taxes and duties that may be applicable in addition to the Price (except where expressly included in the Price). If the Customer is accepting a delivery outside of New

Zealand, the Customer acknowledges and accepts that its Order may be subject to local taxes, duties or levies. JSC is not responsible for any local taxes, duties or levies payable on the Customer's Order, which shall be at the Customer's cost.

14. LATE PAYMENT

- 14.1. Any monies not paid in full in accordance with these Terms may be charged with interest at a rate of 2.5% per month or part month overdue. In addition, JSC is entitled to recover all debt collection costs and related legal expenses (on a solicitor-client basis).
- 14.2. In the event any monies due are not paid in full, JSC reserves the right to immediately suspend any further Product supplies to the Customer. If further Product supplies are suspended, JSC shall not be obliged to resume supply until the amount owing, and any costs incurred in relation to the suspension, are paid in full and JSC has adequate security for future payments. JSC will not be liable to the Customer or any Person for losses arising from suspension of the Product supply. Nothing in this clause prejudices or otherwise affects JSC's rights under clause 28.

15. THIRD PARTY PROVIDERS, CONTRACTORS AND EMPLOYEES

- 15.1. JSC may engage contractors, employees and/or third party suppliers in order to complete the Products, or to provide Third Party Products requested by the Customer.
- 15.2. Notwithstanding any other part of the Agreement, where Third Party Products are used or provided, JSC makes no representation as to, and takes no responsibility for, the quality or fitness for purpose of those Third Party Products (regardless of whether the Third Party Products are brokered or arranged by JSC). The Customer relies solely on the warranties (if any) provided by the contractor or third party supplier.
- 15.3. Unless specifically agreed in writing between the Parties, JSC shall not be responsible for any aspect of project management relating to the project for which the Products are acquired or used.
- 15.4. Where JSC instructs a contractor to complete an installation of the Products for or on behalf of a Customer then the Customer agrees and undertakes not to hold JSC liable for any Claims which may be suffered or incurred by the Customer whatsoever, whether suffered itself or as a result of claims against it by a third party or otherwise, as a consequence of the installation or services provided to the Customer by the contractor.

16. RETURN OF GOODS

- 16.1. Where a Customer seeks to return Goods (e.g. incorrect Orders) then:
 - (a) Credits will not be applied for special runs, non-standard profiles and/or any coated/select length Orders (except for defective Goods as provided by clause 17.3);
 - (b) Credits will not be applied for Forest Stewardship Council® ("FSC®") certified Goods unless both (i) Customer is FSC® certified, and (ii) the Goods are returned to JSC with the FSC chain of custody unbroken;
 - (c) Credits will not be applied for PEFC (Programme for the Endorsement of Forest Certification) certified Goods unless both (i) Customer is PEFC certified, and (ii) the Goods are returned to JSC with the PEFC chain of custody unbroken;
 - (d) JSC will not accept returns of any Goods already installed, or modified, changed or tampered with in any way; and
 - (e) For any other returns (except where covered by clause 17.3), JSC has absolute discretion to accept or decline the Customer's request for the return of the Goods. Where JSC accepts the return of the Goods, JSC may charge a handling fee of up to 20% of the Price.

17. DEFECTIVE PRODUCTS

- 17.1. The Customer must:
 - (a) Inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify JSC of any alleged defect in the Goods; and
 - (b) Notify JSC within seven (7) days of the date on which a defect in the Products was detected or would have become reasonably apparent.
- 17.2. The Customer shall return or make available any defective Goods (if possible) to afford JSC an opportunity to inspect the alleged defective Goods. All shipping, delivery and handling charges for the return of the Goods (if applicable) shall be at the Customer's cost. The Goods must be returned in the condition in which

they were delivered and with all packaging material, brochures and instruction material and in as new a condition as is reasonably possible in the circumstances. If the Customer fails to comply with these steps, the Goods shall be deemed to be free from any defect.

- 17.3. For defective Products, which JSC has agreed in writing that the Customer is entitled to reject, JSC's entire liability and the Customer's exclusive remedy is limited to either (at JSC's discretion):
- (a) Replacing the Products with products either of identical type or similar. JSC reserves the right to supply other compatible materials should the Products no longer be supplied by JSC. JSC is not responsible or liable for the cost of removing and installing any replacement materials;
 - (b) Refunding the value of the defective portion of the Products, provided however that the value will be reduced pro-rata based on the remaining life of the Products (as defined by the durability provisions of the Building Code); or
 - (c) Repairing the Products.
- 17.4. Notwithstanding anything else in the Agreement, the remedies set out in clause 17.3 above will not be provided (and JSC shall have no liability) where:
- (a) The Products have been damaged during delivery or modified, repaired or tampered with by a Person other than JSC;
 - (b) The Products have not been installed in accordance with JSC's documentation, installation guides and other details;
 - (c) The Customer has failed to follow JSC's maintenance, storage or handling recommendations (as set out on JSC's website from time to time and/or in any documentation provided or made available with the Products);
 - (d) The defect was reasonably apparent prior to installation of the Products;
 - (e) The Products have not been stored or used in a proper manner; or
 - (f) Where clause 18.2 applies (JSC shall provide assistance as described in clause 18.2).
- 17.5. In this clause 17, a "defect" and "defective" means any fault or flaw in the Products which is sufficient to constitute a breach of JSC's obligations under the Agreement or any warranties or guarantees, and "rectified" means remedied, fixed or replaced (at JSC's option) so that the relevant item complies with those obligations. Defects do not include:
- (a) Cosmetic blemishes, imperfections, or trivial faults or flaws that are within the tolerances normally regarded as acceptable according to common trade practice, including the tolerances specified in the Timber Grading Standards;
 - (b) Any failure to achieve standards of finish or detail that are beyond what is required by the Agreement and any applicable Consents or Sign-offs;
 - (c) Any fault or flaw that is attributable to incorrect, inappropriate, incomplete or unintended installation, alteration or use of the Products;
 - (d) Any fault or flaw that is attributable to any event or occurrence beyond JSC's reasonable control, or to the acts or omissions of anyone for whom JSC is not responsible;
 - (e) Any fault or flaw in a third-party component or material;
 - (f) Any issue arising from a defective or inappropriate design, specification or instruction provided to JSC by the Customer (or otherwise required to be followed by JSC);
 - (g) Any fault or flaw that is attributable to fair wear and tear, or any failure by the Customer to adequately maintain, preserve, protect and care for the Products;
 - (h) Deterioration because of adverse building environments that restrict air flow, trap moisture or cause wear or damage (whether initially or gradually);
 - (i) Growth of mould, mildew, fungi, bacteria or any organism on any Goods;
 - (j) Any fault or flaw that is attributable to defective use, improper design of the structure, structural failure, settlement or movement of the materials to which the Products are attached or dependent on;
 - (k) Any variation in the dimension or any other characteristic of the Product which is an acceptable or allowable characteristic under the Timber Grading Standards; or
 - (l) Any fault or flaw arising (or exacerbated) by the Customer's failure to promptly notify JSC of the issue.
- 17.6. The Parties agree that:
- (a) Since no two pieces of timber are identical, complete uniformity in grades or shipments is impossible. To manage timber quality and minimum standards in commercial timber supply, various industry

bodies have created and published grading standards for timber. These grading standards establish minimum standards and allowable variation tolerances for timber dimensions and other characteristics. Timber grading is usually undertaken visually, according to prescribed grading standards.

- (b) There are several different published grading standards for timber. Grading standards include (but are not limited to) standards published by PLIB (Pacific Lumber Inspection Bureau), NLGA (National Lumber Grades Authority), NHLA (National Hardwood Lumber Association), SEC (Softwood Export Council), WCLIB (West Coast Lumber Inspection Bureau), MGR (Malaysian Grading Rules), AS (Australian Standards Council), EU Std - EN13145 and NZS3631 (Standards New Zealand). Grading standards for timber are updated from time to time. In these Terms, the relevant current grading standards for timber are referred to as the "**Timber Grading Standards**".
 - (c) Different Timber Grading Standards will apply for different species of timber. In some cases, more than one Timber Grading Standard may apply to a particular species of timber.
 - (d) Different Timber Grading Standards may apply depending on the type of timber (e.g. rough, dressed, kiln-dried etc) or the end use for which the timber is supplied (e.g. flooring, exterior cladding etc).
 - (e) JSC shall solely determine which Timber Grading Standard(s) apply for each of its timber Products and, if more than one Timber Grading Standard applies, then which Timber Grading Standard prevails in the event of conflict.
 - (f) In the event of any dispute about whether a Product satisfies an applicable Timber Grading Standard, then JSC shall arrange for a suitably qualified JSC representative or (at JSC's discretion) a suitably qualified independent person to make a determination. The Parties agree that such determination shall be final and binding.
- 17.7. Product defect claims must be promptly notified to JSC in writing, together with all such information, including photographs, as JSC may reasonably require to evaluate the issue, including:
- (a) Proof of date of purchase of the Products;
 - (b) Satisfactory evidence of the alleged defect;
 - (c) Full details of the alleged defect; and
 - (d) Satisfactory evidence that all recommended storage, handling, and maintenance requirements have been followed (including as set out on JSC's website from time to time and/or in any documentation provided or made available with the Products).
- 17.8. The Customer must provide JSC with access to the relevant worksite or location to inspect the relevant Products.
- 17.9. Any defect in the Products which is notified to JSC within the time period specified in clause 17.1 shall be rectified by JSC within a reasonable time at JSC's own cost. The Customer shall not engage anyone else to do so unless and until a reasonable time has elapsed and the Customer has given JSC at least 20 Working Days' notice of the Customer's intention to engage someone else, or JSC has permanently and unequivocally abandoned the Products. If the Customer engages someone else to rectify the defects when the Customer is not entitled to do so, then without prejudice to JSC's rights and remedies:
- (a) JSC shall be entitled to cancel the Agreement; and
 - (b) JSC shall be immediately discharged from any further obligation or liability in respect of the Products and the Agreement.
- 17.10. To the maximum extent permitted by law, no warranty is provided by JSC where the relevant Products are covered by a warranty provided by another party.
- 17.11. Any requests for out-of-warranty support and maintenance of the Products shall (if accepted by JSC) be provided at JSC's prevailing rates and charges.

18. WARRANTIES

- 18.1. Except as expressly provided in clause 17.3 and (if applicable) the Cladding System Warranty, to the maximum extent permitted by law all guarantees, warranties (statutory, express or implied, including, without limitation, any implied warranties of merchantability, fitness for a particular purpose or standards compliance) or other provisions that would otherwise be implied by statute or rule of law, are expressly excluded, as are any representations or statements made by JSC prior to the Agreement.
- 18.2. To the maximum extent permitted by law, any Third Party Products supplied as part of the Products are subject only to the warranty (if any) given by the manufacturers or suppliers of the Third Party Products. Unless otherwise expressly agreed in writing, JSC does not provide any warranties for Goods not

manufactured by JSC, and the Customer acknowledges and agrees that it relies solely on the warranty (if any) provided by the manufacturer or supplier of the Third Party Products, and their standard warranty terms will apply. JSC shall provide all reasonable assistance with any Customer warranty claims arising out of Third Party Products, provided however that the Customer shall be solely responsible for compliance with the manufacturer's or supplier's warranty registration and claims processes.

- 18.3. If the Products are acquired for the purposes of a business, then all guarantees, warranties, rights or remedies implied by the Consumer Guarantees Act 1993, sections 9, 12A and 13 of the Fair Trading Act 1986, or any similar statutes are expressly excluded to the maximum extent permitted by law.

19. INDEMNITY

- 19.1. To the maximum extent permitted by applicable Laws, the Customer agrees to release, indemnify and keep JSC, its subsidiaries, affiliates, successors, assigns and Personnel indemnified from and against all Claims arising from or in any way in connection with:
- (a) The Customer's failure to comply with or breach of the Agreement;
 - (b) Non-payment of any amounts owed by the Customer when they become due, or any action taken by JSC as a result;
 - (c) Infringement of Intellectual Property or other proprietary rights in the Products;
 - (d) The Customer's use or installation of the Products (including, without limitation, compliance with all relevant laws and Consents, and any incorrect or defective installation or use of Products);
 - (e) Any claim or demand by a third party arising from or in connection with the Products;
 - (f) Any instruction or information provided by the Customer to JSC in connection with the Products;
 - (g) Any damage to the Products caused by the Customer, the Customer's authorised representatives, or any separate contractors engaged by the Customer; and
 - (h) Any breach of the Health and Safety at Work Act 2015 (or other applicable health and safety requirements) caused by the Customer, the Customer's authorised representatives, or any separate contractors engaged by the Customer.
- 19.2. The Customer may use current published material, manuals, training notes, instructions of care for the Products, installation and maintenance guidelines and other materials provided by JSC. However, the Customer shall not give or make any assertion or representation, in relation to the Products, to any other Person without the prior approval in writing of JSC. The Customer shall indemnify JSC against any Claim or cost incurred by JSC as a result of any breach by the Customer of this provision.

20. EXCLUSION OF LIABILITY

- 20.1. Except as provided in clause 17 and to the fullest extent permitted by law, JSC and its Personnel shall in no circumstance be liable under this Agreement, at common law (including negligence) or otherwise for any Claims arising from or relating to any Products supplied or this Agreement, or from a consequence of any act, default or negligence on the part of JSC or its Personnel.
- 20.2. Without limiting clause 20.1, JSC and its Personnel shall in no circumstance be liable for:
- (a) Any loss or damage arising by reason of any delay in the completion or delivery of the Products;
 - (b) Any loss of profits or loss of revenues;
 - (c) Any indirect or consequential loss;
 - (d) Any loss or damage resulting from the reliance on JSC's publications and materials without direct advice from JSC;
 - (e) Any loss or damage resulting from advice provided by JSC or its Personnel, including advice provided in support of a Consent or Sign-off;
 - (f) Any loss or damage resulting from any errors or omissions arising from incorrect information provided by the Customer, or failure by the Customer to provide information, or an oversight or a misinterpretation of a Customer's verbal instructions; or
 - (g) Any loss or damage caused in part or in full by the act or omission of the Customer or a third party, including where Products have been installed or handled by third parties.
- 20.3. JSC shall have no liability for any Claim relating to or arising from any representations, warranties or conditions made or conveyed by any agent or representative of JSC, which are not expressly confirmed by JSC in writing.

- 20.4. JSC accepts no liability for any Claim relating to or arising from information, documents and other materials (e.g. contract drawings) supplied by the Customer or third party (e.g. architect) except those expressly requested by JSC.
- 20.5. Unless and to the extent that the Agreement expressly provides otherwise, in the event that JSC is liable to the Customer, JSC's total aggregate liability in respect of the Products and the Agreement, whether in contract, tort (including negligence), equity, statute or otherwise, in respect of all Claims arising from or in connection with the Products or the Agreement, or from any negligence, misrepresentation or other act or omission on the part of JSC or its Personnel, shall not in any event exceed \$100.

21. VARIATION OF MATERIALS

- 21.1. If any materials required to supply the Goods are not reasonably procurable, JSC may substitute other materials of a similar nature and quality after consultation with the Customer.
- 21.2. If the substitution requires an amendment to the scope of the Products or any Consent or Sign-off, the Customer shall be responsible for obtaining and paying for the amendment, and any time spent by JSC in assisting the Customer with the amendment shall be subject to a Price increase.

22. CONFIDENTIALITY

- 22.1. The Parties shall, at all times during and after completion of the Products, keep the following information ("Confidential Information") in whatever form (including electronic) confidential (whether disclosed before or after an Agreement):
- (a) Details of the Order or any proposal or Quotation provided by JSC;
 - (b) All designs, drawings, diagrams, records, documents and reports in relation to JSC's Intellectual Property; and
 - (c) Other commercially sensitive information relating to the other Party's business.
- 22.2. The Parties must not use any of the Confidential Information supplied by the other Party for any purpose other than the performance of the Agreement.
- 22.3. Confidential Information must be returned or destroyed upon termination or completion of the Agreement or otherwise upon request of the Party that supplied the information.
- 22.4. JSC will keep the details of the Products confidential where reasonably instructed to do so by the Customer.
- 22.5. The preceding obligations in this clause 22 shall apply except:
- (a) As authorised in writing by the Party that supplied the information;
 - (b) As reasonably required on a "need to know" basis to officers, employees, and professional advisers of the Party, for the purposes of implementing the Agreement and supplying the Products, provided such persons have agreed to keep the Confidential Information confidential;
 - (c) As required by law; or
 - (d) To the extent that any Confidential Information is already or becomes public knowledge, other than as a result of a breach by the Party.
- 22.6. Where information or material relates exclusively to one Party, nothing in these Terms shall require that Party to maintain confidentiality in respect of that information or material.

23. PRIVACY AND DATA OBLIGATIONS

- 23.1. In order for JSC to process an Order and supply the Products, it may collect certain Personal Information about the Customer or the Guarantor (as applicable) (each an "Individual"). The Individual consents to the collection, use, disclosure and processing of that information by JSC in accordance with JSC's Privacy Policy (accessible at www.jsc.co.nz/privacy-policy). JSC's Privacy Policy may be updated from time to time. The Parties agree that JSC's Privacy Policy, as may be modified by JSC from time to time, is incorporated into the Agreement.

24. INTELLECTUAL PROPERTY

- 24.1. The Parties acknowledge that:
- (a) All Intellectual Property in the Products (except Intellectual Property provided by the Customer, and excluding Third Party Products) and/or created incidentally, is the property of JSC;

- (b) Any of JSC's existing Intellectual Property used or applied in the Products is reserved as the sole property of JSC. The Customer may not use, reverse engineer, interfere with or alter the Intellectual Property in any way;
- (c) JSC shall be entitled to utilise in future projects any know-how which it obtains or develops when supplying the Products;
- (d) Where JSC has designed, drawn or developed Products for the Customer, then the copyright in any designs and drawings and documents shall remain the property of JSC. Under no circumstances may such designs, drawings and documents be used without the express written approval of JSC;
- (e) JSC retains the right to use for the purposes of JSC's portfolio and marketing purposes in any media, websites, exhibitions, competitions, and other material, any documents, designs, drawings or Products which JSC has created for the Customer; and
- (f) JSC retains the right to take and use photographs of Products for the purposes described in (e).

24.2. The Customer warrants that all designs, specifications or instructions given to JSC will not cause JSC to infringe any patent, registered design or trademark in the execution of the Order and the Customer agrees to indemnify JSC against any Claims in respect of any such alleged infringement.

25. TITLE

25.1. JSC and the Customer agree that title and ownership of the Goods shall remain the sole property of JSC and shall not pass to the Customer until:

- (a) The Customer has paid for the Products in full together with all amounts due from the Customer to JSC; and
- (b) The Customer has met all of its other obligations to JSC.

25.2. Receipt by JSC of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.

25.3. It is further agreed that until ownership of the Goods passes to the Customer in accordance with clause 25.1:

- (a) The Customer is only a bailee of the Goods and must return the Goods to JSC on request;
- (b) The Customer holds the benefit of the Customer's insurance (as required by clause 8.8) of the Goods on trust for JSC and must pay to JSC the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
- (c) The Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer is doing so for and on behalf of JSC and must hold the proceeds of any such act on trust for JSC and must pay or deliver the proceeds to JSC on demand;
- (d) The Customer is selling, disposing or otherwise parting with possession of the Goods as an agent of JSC and shall not represent to any other Person that it is acting for JSC and JSC will not be bound by any contract with any other Person to which the Customer is a party;
- (e) The Customer irrevocably authorises JSC, its agent and contractors without notice to enter any premises occupied by the Customer where JSC believes the Goods are kept to recover possession of the Goods without in any way being liable to the Customer or any Person claiming through the Customer. If the Goods or any part of the Goods is wholly or partially attached to other goods JSC may, where practical, disconnect or sever in any way whatsoever as may be necessary to remove the Goods. JSC shall not be liable for any damage or loss to the premises or other property which may arise as a result of such entry and recovery of the Goods;
- (f) If the Goods are attached, fixed or incorporated into any property of the Customer, by way of any manufacturing or assembly process by the Customer or any third party, title in the Goods shall remain with JSC until the Customer has made payment for all Goods, and where those Goods are mixed with other property so as to be a part of or a constituent of any new Goods, title to these new Goods shall deemed to be assigned to JSC as security for the full amount owing between JSC and the Customer;
- (g) JSC may recover possession of any Goods in transit whether or not the Goods have been delivered;
- (h) The Customer shall not charge or grant an encumbrance over the Goods nor grant or otherwise give away any interest in the Goods while they remain the property of JSC;
- (i) JSC may sell, lease or otherwise dispose of the Goods; and
- (j) JSC may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

26. PERSONAL PROPERTY SECURITIES ACT 1999 ("PPSA")

- 26.1. The Customer acknowledges and agrees that:
- (a) The Agreement constitutes a security agreement for the purposes of the PPSA; and
 - (b) The Customer grants to JSC a security interest (for the purposes of the PPSA) in all Products that have been supplied and that will be supplied in the future by JSC to the Customer to secure payment of the Price, and to secure payment of all fees and other amounts due from the Customer to JSC from time to time.
- 26.2. The Customer undertakes to:
- (a) Sign any further documents or provide any further information (such information to be complete, accurate and up-to-date in all respects) which JSC may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) Indemnify, and upon demand reimburse, JSC for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
 - (c) Not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of JSC; and
 - (d) Where applicable, immediately advise JSC of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 26.3. JSC and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to the Agreement. The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 26.4. Unless otherwise agreed to in writing by JSC, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 26.5. The Customer shall unconditionally ratify any actions taken by JSC under clauses 26.1 to 26.4.

27. SECURITY AND CHARGE

- 27.1. In consideration of JSC agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any assets capable of being charged, or owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under the Agreement (including, but not limited to, the payment of any money).
- 27.2. The Customer indemnifies JSC from and against all JSC's costs and disbursements including legal costs on a solicitor and client basis incurred in exercising JSC's rights under clauses 25-27.
- 27.3. The Customer irrevocably appoints JSC and each director of JSC as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of clauses 25-27, including, but not limited to, signing any document on the Customer's behalf.

28. TERMINATION OF ORDERS

- 28.1. TERMINATION ON NOTICE:
- (a) The Customer may only terminate an Order with JSC's consent and by paying JSC for the Product work and expenses undertaken to date.
 - (b) In the event that the Customer cancels an Order (with JSC's consent):
 - (i) The Customer will be liable for the cost of pre-ordered Third Party Products if those orders cannot be cancelled, or if a cancellation fee is payable, or amounts paid by JSC are forfeited on cancellation; and
 - (ii) Where JSC has manufactured Customer-specific Products, then the Customer is liable to pay the full cost of the Products at the time of termination.
 - (c) JSC may cancel any Order at any time before the Products are supplied to the Customer by giving written notice to the Customer. On giving such notice JSC shall repay to the Customer any money paid by the Customer for the Products. JSC shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 28.2. TERMINATION FOR CAUSE: Without prejudice to any other right or remedy it may have, whether under these Terms, under statute or otherwise, JSC shall be entitled to cancel all or any part of any Order and/or immediately suspend the provision of Products to the Customer if:

- (a) The Customer is in breach of these Terms and such breach is not remedied within ten (10) Working Days of notifying the Customer;
- (b) The Customer commits an act of bankruptcy or makes any assignment or composition with its creditors;
- (c) Liquidation or bankruptcy proceedings are commenced for the Customer;
- (d) The Customer has exceeded any applicable credit limit provided by JSC;
- (e) The Customer has a receiver or manager or statutory manager appointed; and/or
- (f) Any money payable to JSC becomes overdue, or in JSC's opinion the Customer will be unable to make a payment when it falls due.

28.3. SUSPENSION: Where supply of Products is suspended on the Customer's instructions for 5 days or more then the Customer must, at the time of suspension, pay JSC for all Products supplied to date.

29. CONSEQUENCES OF TERMINATION

- 29.1. Upon suspension or termination of an Order, JSC shall be entitled to payment for all Products supplied (and payment for work on any Products yet to be supplied, except where JSC has cancelled the Order pursuant to clause 28.1(c)) up to the effective date of postponement or termination, and all other fees, disbursements and costs and losses arising from or incidental to the postponement or orderly wind-down of the Order (including lost labour costs if JSC is unable to reallocate Personnel to other projects).
- 29.2. If the supply of Products is cancelled or suspended, JSC shall not be obliged to resume the supply of Products until the amount owing, and any costs incurred in relation to the cancellation or suspension, are paid in full and JSC has adequate security for future payments. JSC will not be liable to the Customer or any Person for losses arising from the cancellation or suspension of the Products under clause 28.
- 29.3. If the Customer terminates this Agreement, other than through breach by JSC, the Customer shall indemnify JSC against any Claims arising from or relating to the Agreement or the Products.
- 29.4. Early termination of an Order will not prejudice or affect the accrued right or liabilities of each Party to the other.

30. FORCE MAJEURE

- 30.1. JSC shall not be liable in any way whatsoever for any failure or delay in performing an obligation under the Agreement or breach of these Terms that is due to causes beyond its reasonable control, such as (but not limited to) natural catastrophes, terrorist acts, governmental acts or omissions, pandemics, transportation stoppages or slowdowns, restrictions on site or network access, confiscation or seizure, laws or regulations, labour strikes or difficulties, transportation stoppages or slowdowns or the inability to procure parts, equipment, services, applications or materials.

31. DISPUTE RESOLUTION

- 31.1. Either Party may raise a dispute by notice in writing to the other Party setting out details of the dispute. The Parties agree to use their best efforts to resolve any dispute which may arise under this Agreement through good faith without-prejudice negotiations.
- 31.2. On receipt of a dispute notice the Parties' authorised representatives shall meet (or otherwise communicate, if a meeting is not practicable) and attempt to resolve the dispute through good faith negotiations on a 'without prejudice' basis within ten (10) Working Days of the date of the notice.
- 31.3. If the dispute is not resolved under clause 31.2, the Parties may (by written agreement) agree to attempt to settle the dispute by mediation. If the Parties agree to mediate, the Parties shall appoint a mediator agreed by the Parties, or if there is no agreement on the mediator within ten (10) Working Days of the Parties agreeing to mediation, the mediator will be appointed by the President of the New Zealand Law Society or his/her nominee. Before mediation commences, the Parties and the mediator shall sign a mediation agreement. The cost of the mediation will be shared equally between the Parties or as the mediator otherwise directs.
- 31.4. If the Parties do not agree to mediation, or if after mediation has been attempted, the Parties remain unable to reach a satisfactory outcome, then either Party may take such further steps as they choose.
- 31.5. In the event of a dispute between the Parties under the Agreement, the Parties shall continue to perform their obligations under the Agreement as far as possible as if no dispute has arisen, pending the final resolution of the dispute.

31.6. The Parties agree not to commence litigation or any formal claim/dispute resolution processes in respect of the Agreement unless the preceding provisions of this clause 31 have been complied with, provided that nothing shall prevent any Party from taking immediate steps to seek urgent equitable relief in any Court.

32. TRUSTS

32.1. If the Customer at any time upon or subsequent to entering into the Agreement is acting in the capacity of trustee of any trust ("Trust") then whether or not JSC may have notice of the Trust, the Customer covenants with JSC as follows:

- (a) The Agreement extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund; and
- (b) The Customer has full and complete power and authority under the Trust to enter into the Agreement and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.

33. NOTICES

33.1. Notices under the Agreement can be delivered in person, or by post or email to the addressed notified by each Party (which may be updated from time to time by each Party).

33.2. Notices given pursuant to the Agreement shall be deemed to have been given and received:

- (a) In the case of personal delivery, when delivered;
- (b) In the case of a postal delivery, on the seventh Working Day after posting to the last known address of the recipient; and
- (c) In the case of emails, upon delivery to the recipient's last known email address provided that no notification of failed delivery has been received by the sender, and provided that any notice given after 5:00pm or on a day which is not a Working Day shall be deemed to be given at 9:00am on the next Working Day.

34. MISCELLANEOUS

- 34.1. JSC may license or assign all or any part of its rights or obligations under the Agreement by written notice to the Customer.
- 34.2. The Customer cannot license or assign all or any part of its rights or obligations under the Agreement without the written approval of JSC, which shall be granted at JSC's sole discretion.
- 34.3. The covenants, conditions and provisions of the Agreement which are capable of having effect after the expiration of the Agreement shall remain in full force and effect following the expiration of the Agreement.
- 34.4. If any provision of the Agreement for any reason is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable it shall not affect the legality, validity or enforceability of the other provisions or other part of any provisions of the Agreement and shall be severed from the Agreement so that the remaining provisions of the Agreement shall remain in full force and effect.
- 34.5. Failure by JSC to insist upon strict performance of any of the Terms or to exercise any of its rights shall not be or be deemed to be a waiver of any subsequent breach of any term, condition or right. No right or obligation under the Agreement shall be deemed to be waived by JSC except by notice in writing signed by each Party.
- 34.6. The provisions of the Agreement shall not be varied except by agreement in writing by the Parties.
- 34.7. The Parties agree to act in good faith towards one another and use their best endeavours to comply with the spirit and intention of the Agreement.
- 34.8. This Agreement shall be construed in accordance with and governed by the laws of New Zealand (but excluding sections 202 – 206 of the Contract and Commercial Law Act 2017 (United Nations Convention on Contracts for the International Sale of Goods)) and the Customer submits to the non-exclusive jurisdiction of the New Zealand courts in respect of all matters relating to the Agreement.
- 34.9. Nothing in the Agreement shall be construed as evidence of a partnership between the parties or their successors or assignees, and unless specifically agreed in writing, no provision of the Agreement shall empower a Party to act on behalf of the other in any way, or to incur any liability on behalf of the other.

- 34.10. Both Parties warrant that they have the power to enter into the Agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that the Agreement creates binding and valid legal obligations on them.
- 34.11. In the event of any conflict arising between an Order and these Terms, the Order shall prevail to the extent required to resolve the conflict.